

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5728

PETITION OF FRANCES GREEN AND BARBARA GEIGER-GREEN

(Hearing held March 6, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, May 2, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59 Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2) and 59-C-1.323(b)(1). The petitioners propose to construct (1) a two-story addition that requires an eight (8) foot variance as it is within twelve (12) of the rear lot line; (2) a second-story addition to an existing accessory structure (garage) that requires an eighteen (18) foot variance as it is within two (2) feet of the rear lot line; and (3) a second-story addition to an existing accessory structure (garage) that requires a two (2) foot variance as it within five (5) feet of the side lot line. The required rear lot line setback is twenty (20) feet and the required side lot line setback is seven (7) feet.

Joseph Heinz, the project designer, represented the petitioners at the public hearing. Christine Morgan and John Fay appeared in opposition to the variance request.

The subject property is Lot 52 and Part of Lots 44 and 50, Wynnewood Park Subdivision, located at 1011 South Mansion Drive, Silver Spring, Maryland, in the R-60 Zone (Tax Account No. 01432401).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a one-story addition at the rear of the residence and a second-story addition to the existing accessory structure (garage).
2. Mr. Heinz testified that the original request for the addition to the residence was for a two-story addition and that the addition was redesigned as a one-story addition. Mr. Heinz submitted elevations for a one-story addition at the public hearing. The revised exhibits for the one-story addition were entered into the record as Exhibit Nos. 10(a)-(c).
3. Mr. Heinz testified that the petitioners' property is a shallow lot and that the lots that adjoin North and South Mansion Drive are larger in size. Mr. Heinz testified that the proposed second-story addition for the garage would be similar to other existing improvements in the neighborhood.
4. Mr. Green testified that his property is a shallow lot with a small rear yard and that the proposed construction would be in harmony with the architecture in the neighborhood. Mr. Green testified that the construction was designed to minimize the visual impact on the neighboring properties and that he spoke with his neighbors and received letters of support from some of the neighbors. The letters of support were entered into the record as Exhibit Nos. 14(a)-(c).
5. Mr. Green testified that the proposed construction would be screened by an existing row of Leyland Cypress trees and that the original proposed two-story addition has been

redesigned as a one-story addition because of the concerns of his neighbor at the rear of the property.

6. Mr. Fay, an adjoining neighbor on Lot 44/45, testified that the proposed construction would be too massive for the neighborhood and that the proposed construction would be detrimental to the use and enjoyment of his property.
7. Ms. Morgan entered letters of opposition into the record from Caribelle Conway and Mr. and Mrs. Andre. Ms Conway's letter states that the addition to the rear of the residence, as originally proposed, would loom over her property. The Andres' letter states that they had no concerns regarding the revised addition to the residence, but that the addition to the garage was worrisome.

FINDINGS OF THE BOARD

Based upon the petitioners' bind testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no peculiar topographical or other conditions that are not shared with the neighboring properties. The Board further finds that the size and shape of the petitioners' lot is consistent with the size and shape of the other properties in the immediate neighborhood, as shown on the zoning vicinity map (Exhibit No. 7).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of (1) eight (8) feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition; (2) eighteen (18) feet from the required twenty (20) foot rear lot line setback for the construction of an second-story addition to the existing accessory structure (garage); and (3) two (2) feet from the required seven (7) foot side lot line setback for the construction of a second-story addition to the existing accessory structure (garage) are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Allison Ishihara Fultz, Angel M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 2nd day of May, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland